IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.481 Of 2004.

Mst. Akkho & Another Versus Muradi Khan & Others

Date Of Order ::: 02.11.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. D.K. Garg, Counsel for plaintiff-appellants.
Mr. J.P. Goyal, Counsel for defendant-respondents.

//REPORTABLE//

By the Court :

Heard learned counsel for both the parties on the application under Section 5 of the Limitation Act for condonation of delay of 79 days in filing the appeal, on the application under Order 41 Rule 27 of the C.P.C., as well as on the admission of the second appeal.

The plaintiff-appellants instituted a suit for cancellation of the sale-deed dated 16.10.1986 executed

by Subhani, the father of the plaintiff-appellant, on the ground that their father expired on 19.10.1984 and he was not alive on the date of execution of the sale-deed i.e. on 16.10.1984, therefore, the sale-deed is forged one and the same be cancelled. The defendants filed their written statements, wherein it was contended that the sale-deed, in dispute was executed by Subhani on 16.10.1986 and the same was also got registered before the Sub-Registrar and Subhani died after the execution of the sale-deed i.e. on 19.10.1986. Learned Lower Court framed a specific Issue No.2 as to whether the plaintiff's father Subhani died on 19.10.1986 in place of 19.10.1984?.

Learned Lower Court after appreciating the evidence of both the parties recorded a finding that Subhani died on 19.10.1986 and the sale-deed was rightly executed and registered by Subhani on 16.10.1986. Consequently, the learned Lower Court dismissed the suit. The judgment and decree passed by the learned Lower Court was affirmed by the First Appellate Court also.

The plaintiff-appellants have also filed an application under Order 41 Rule 27 of the C.P.C.,

whereby they have produced a copy of the death certificate of Suhan Khan, wherein the date of death of Suhan Khan has been mentioned as 19.10.1984.

Learned counsel submits that from this certificate, it is clear that the father of the plaintiffs died on 19.10.1984 much before execution of the sale-deed, therefore, the said certificate is relevant and it may be taken on record and the case be remanded back to decide the suit afresh.

I have considered the submissions of learned counsel for both the parties as well as the death certificate, filed along with the application under Order 41 Rule 27 of the C.P.C.

From the said certificate, it is clear that this date of death of Suhan Khan has been registered on 05.07.2004 after 20 years of the date of death and even after dismissal of the suit by the learned Lower Court as well as appeal by the First Appellate Court, the learned Lower Court dismissed the suit of the plaintiffs on 18.01.1999. The first appeal of the plaintiffs was dismissed on 07.04.2004, whereas this date of death of Suhan Khan has been registered on 05.07.2004. It is also relevant to mention here that

this certificate has been issued by the Gram Sevak, Gram Panchayat, Manaya. It is further clear that even the date of application for obtaining the certificate and the date of dispatch of this certificate have not been mentioned. No explanation has been given by the appellants as to why such certificate was not procured during the pendency of the suit itself and how the date of death of the deceased has been registered after 20 years and what is the basis of it, more-so when two Courts below had already recorded a finding of fact that Subhani died on 19.10.1986.

Prima-facie, I find that the date of death mentioned in the certificate does not appear to be correct. Learned Lower court as well as the First Appellate Court, both have recorded a concurrent finding about the date of death of the deceased Subhani as 19.10.1985. In these circumstances, I do not find any merit or reasons to allow the application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 and the same is accordingly dismissed.

The question of date of death of Subhani, the father of the plaintiffs, is purely a question of fact and both the Courts below, after considering the

evidence on record, have recorded a concurrent finding of fact in this regard, which cannot be interfered with by this Court in second appeal under Section 100 of the Code of Civil Procedure, 1908.

The plaintiff-appellants have preferred this second appeal with a delay of 79 days and an application under Section 5 of the Limitation Act has been filed to condone the delay in filing the appeal.

The delay made in filing the second appeal has also not been explained properly.

No substantial question of law is involved in this second appeal.

Consequently, the application under Section 5 of the Limitation Act as well as the second appeal, both are hereby dismissed being barred by limitation as well as on merits at the admission stage itself with no order as to costs.

` **(Narendra Kumar Jain) J.**

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